

HUMAN SERVICES

DIVISION OF YOUTH AND FAMILY SERVICES

Legal Guardianship

Proposed New Rules: N.J.A.C. 10:132A

Authorized By: Gwendolyn L. Harris, Commissioner, Department of
Human Services.

Authority: N.J.S.A. 3B:12A-1, 3B:12A-6f, 30:4C-4(h), 30:4C-12.1,
30:4C-84 to 88, and 44:10-44 to 54.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN

Submit written comments by November 2, 2002, to:

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The agency proposal follows:

Summary

The purpose of Subchapters 1 and 2 of the proposed new rules is to establish the DYFS Legal Guardianship Subsidy Program within the Division of Youth and Family Services. The program provides a monthly maintenance payment and health care coverage on behalf of children placed by the Division with relatives who obtain kinship legal guardianship through the Kinship Legal Guardianship Act. The purpose of the proposed Subchapter 3 is to identify the responsibilities of the Division under the law regarding kinship caregiver assessments and assessments of a parent who petitions the court, as required pursuant to the Kinship Legal Guardianship Act.

The genesis of the program and these rules is the enactment of the Kinship Legal Guardianship Act, P.L. 2001, c.250 (N.J.S.A. 3B:12A-1 to 12A-7 and 30:4C-84 to 88), and the Work First New Jersey Act, P.L. 1997, c.14. In combination, these laws enable the Division to provide services to income-eligible children who achieve permanency when the relative with whom the Division placed the child obtains kinship legal guardianship. Establishment of the program was also encouraged by enactment of the Federal Adoption and Safe Families Act, H. Res 327, 42 U.S.C. 622 et seq., and the State Adoption and Safe Families Act, P.L. 1999, c.53, which require timely permanency when a child at risk of abuse or neglect in his or her own home is placed by the Division.

Consistent with State and Federal mandates, the Division of Youth and Family Services encourages placement with relatives when a child at risk of abuse or neglect must be removed from his or her home. The Division realizes that placement with relatives, rather than placement with persons unfamiliar to the child, can promote a child's well-being. If the child is temporarily separated from his or her parents, relatives help the child maintain a sense of identity and continuity until he or she can return home. Similarly, permanent placement with relatives can be beneficial to a child who is unable to return to his or her own parents.

The Division recognizes the importance of timely permanency. In many situations, adoption is an appropriate case goal for a child who cannot return to his or her own parents. However, sometimes adoption is not likely or feasible for a child. In such cases, the Division supports the use of kinship legal guardianship to provide permanency to children placed with relatives.

Historically, New Jersey law has limited the designation of a legal guardian for a child primarily to situations in which the child's parents are deceased. The Kinship Legal Guardianship Act expands the circumstances under which legal guardianship may be awarded. Specifically, it permits a person to obtain kinship legal guardianship when a child's parents have an incapacity of such a serious nature that they are unable to provide care to the child. Therefore, it allows children placed by the Division to achieve permanency through kinship legal guardianship when a relative is able to provide a safe permanent home.

The Division has certain responsibilities under the Kinship Legal Guardianship Act which are unconnected to the program. These responsibilities are addressed in Subchapter 3. The Division is required by law to do kinship caregiver assessments in certain situations. The completion of the assessment is not connected to participation in the Division's program. The Division is also required to do a parenting assessment in the case of a parent who petitions the court to vacate the kinship legal guardianship order when the court refers completion of the parenting assessment to the Division. The rules specify that the Division complete the parenting assessment in cases where the Division was involved in petitioning the court to grant kinship legal guardianship.

There is currently no program for the Division of Youth and Family Services to provide financial services when a child achieves permanency through legal guardianship. The Division's adoption subsidy program is available for children with special needs who achieve permanency through adoption. But there is no similar Division program for children whose relatives are willing to make a permanent commitment to care for a child through kinship legal guardianship.

The only source of assistance has been the Work First New Jersey program which provides a maximum of \$162 per month per child through the County Welfare Agency. The Work First New Jersey Act authorizes the Commissioner of the Department of Human Services to conduct projects which are likely to promote the objectives of Work First New Jersey. Specifically, one of its objectives is to operate programs so that

children may be cared for in their own homes or in the homes of relatives. The Division of Family Development proposed rules at N.J.A.C. 10:90-19 to establish a Kinship Care Subsidy Program (KCSP) to provide financial assistance to children placed with low income legal guardians by the child's parents.

Likewise, the Division of Youth and Family Services is seeking to establish the DYFS Legal Guardianship Subsidy Program to provide financial services to income-eligible children placed by the Division with relatives who subsequently obtain kinship legal guardianship. The relative must meet certain standards to ensure the child's protection and permanency. The child's income must not exceed 500% of the State Median Income for a one-person family, as published in the Federal Register.

The start-up date for the DYFS Legal Guardianship Subsidy Program was January 1, 2002. The program is funded by Work First New Jersey using Federal Temporary Assistance for Needy Families funds. When fully implemented, the program is expected to serve a population of up to 2,000 children, based on current funding.

As the Department has provided a 60-day comment period on this notice of proposal, it is therefore excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 10:132A-1.1 states the purpose of Subchapters 1 and 2.

Proposed N.J.A.C. 10:132A-1.2 states the scope of Subchapters 1 and 2.

Proposed N.J.A.C. 10:132A-1.3 references and states the definitions used in the chapter.

Proposed N.J.A.C. 10:132A-1.4 states the service limitations on the program.

Proposed N.J.A.C. 10:132A-1.5 states the responsibilities of a person requesting approval or already approved for the program.

Proposed N.J.A.C. 10:132A-1.6 states the eligibility requirements for the program.

Proposed N.J.A.C. 10:132A-1.7 states standards which must be met prior to approval for the program.

Proposed N.J.A.C. 10:132A-1.8 states the Division's action on a request for approval for the program.

Proposed N.J.A.C. 10:132A-1.9 states the circumstances requiring redetermination of approval for the program.

Proposed N.J.A.C. 10:132A-1.10 states the circumstances requiring termination of a child's participation in the program.

Proposed N.J.A.C. 10:132A-1.11 states the dispute resolution process for a relative or child for whom approval for the program has been denied or terminated.

Proposed N.J.A.C. 10:132A-2.1 states the types of services provided by the program.

Proposed N.J.A.C. 10:132A-3.1 states the purpose of Subchapter 3.

Proposed N.J.A.C. 10:132A-3.2 states the scope of Subchapter 3.

Proposed N.J.A.C. 10:132A-3.3 states when a Division representative shall complete a kinship caregiver assessment.

Proposed N.J.A.C. 10:132A-3.4 states the information that the Division provides to a designated agency and the court.

Proposed N.J.A.C. 10:3.5 states the Division's responsibility when a parent has requested that the court vacate a kinship legal guardianship order.

Social Impact

Subchapters 1 and 2 the proposed new rules creating the Legal Guardianship Subsidy Program are expected to have a positive social impact by enhancing protection and permanency for children placed with relatives by the Division. Consistent with State and Federal mandates, when a child's parents can not provide a safe home, the Division of Youth and Family Services encourages the placement of the child with relatives, rather than with foster parents unfamiliar to the child. Advocates for children and relative caregivers have supported increased financial assistance for children placed by the Division. Once the relative has cared for the child for at least one year, the proposed rules establish a program to provide financial assistance on behalf of a child whose relative makes a commitment through kinship legal guardianship to permanently care for a child when return home and adoption are not likely or feasible.

The impact of the proposed rules on each child, relative, and parent covered by them is expected to be positive. When fully implemented, the program, as presently funded, will serve up to 2,000 children. Each child has access to maintenance and health care coverage through the program. The program will enhance permanency for children and the stability of families by encouraging permanent placement with relatives. It allows the Division of Youth and Family Services to provide maintenance to a child after the relative obtains kinship legal guardianship. The program also permits the Division to provide maintenance to children in a type of permanent placement that enables parents to retain certain rights. For

example, the court can require that the relative provide the parent with visitation or parenting time.

The impact upon the Division of Youth and Family Services is positive as the proposed new rules reflect policy requirements consistent with good casework practice as well as State and Federal mandates regarding permanency for children.

Positive reaction to the proposed rules is anticipated from relatives caring for children placed by the Division, advocacy groups representing grandparents caring for their grandchildren, child advocacy agencies, and the press. Initiatives for the Division to provide benefits to children placed with relatives have also been supported by members of the State Legislature and the New Jersey Assembly Task Force on Grandparenting.

The proposed rules were encouraged by enactment of the Kinship Legal Guardianship Act which expands the circumstances under which legal guardianship can be awarded and enables children placed by the Division to achieve permanency when their relative caregiver obtains kinship legal guardianship.

The requirements of Subchapter 3 that the Division provide information to the court and complete certain kinship caregiver assessments have a positive impact on those involved in the process of awarding kinship legal guardianship because the Division already has information available to share with the court.

Economic Impact

The proposed rules have a positive economic impact on children placed with relatives by the Division and on the relatives with whom the children are placed. The legal guardian of each child approved for participation in the DYFS Legal Guardianship Subsidy Program receives a monthly maintenance payment of \$250 on the child's behalf. The program also ensures that the child has health care coverage.

The DYFS Legal Guardianship Subsidy Program is funded through Work First New Jersey by the Federal Temporary Assistance to Needy Families program. It is budgeted on an annual basis for the amount of \$2.1 million. The Division anticipates that up to 2000 children will be served with that funding.

These rules result in the expenditure of maintenance payments from Federal TANF money on behalf of children whose relatives might otherwise have provided care independently or through Work First New Jersey. There will be a decrease in the Division's administrative costs as services and placement-related administrative activities are terminated when the child's permanent plan is achieved as the relative obtains kinship legal guardianship.

There is a positive economic impact on the County Welfare Agencies to the extent that children participating in the DYFS Legal

Guardianship Subsidy Program no longer require services or administrative activities from their staff.

The requirement in the proposed new rules that a relative must obtain Kinship Legal Guardianship in order to be eligible for the DYFS Legal Guardianship Subsidy program is not expected to significantly increase the workload for the courts. For most children participating in the program, kinship legal guardianship can be an alternative disposition for litigation already initiated by the Division and does not require the filing of an additional petition with the court. After kinship legal guardianship has been awarded, no child participating in the program requires placement-related judicial oversight, including the Child Placement Review system.

The Division's role in completing kinship caregiver assessments, providing current information to designated agencies and the courts, and preparing parenting assessments will not add significantly to the Division's expenses. Caseworkers already working for the Division perform many of these duties as part of their job. The domestic violence checks required by the court and the child abuse record checks done for non-DYFS cases will be done by two additional employees.

No economic effect is anticipated on the public.

Federal Standards Statement

The proposed new rules do not exceed requirements of Federal law.

The proposed new rules are subject to the Federal requirements and standards contained in Public Law 104-193, the Personal Responsibility and Work Opportunity Act, and meet, but do not exceed those requirements. Therefore, a Federal standards analysis is not required.

The proposed new rules are consistent with Federal requirements necessary to receive funding from Work First New Jersey through the Federal Temporary Assistance to Needy Families (TANF) program. The DYFS Legal Guardianship Subsidy Program enables children to be cared for in the homes of their relatives, which is an objective of the TANF program identified in 45 CFR 260.20.

The proposed new rules also assist the Division to comply with the intent of the Federal Adoption and Safe Families Act (ASFA). 42 U.S.C. 675(5)(E)(i) requires the Division to seek permanency through adoption for children who can not return home, unless the child is being cared for by a relative. In this regard, ASFA recognizes kinship legal guardianship as an alternative permanent placement for a child in 42 U.S.C. 671(a)(15)(F).

I, Commissioner Gwendolyn L. Harris, certify that the above analysis permits the public to understand accurately and plainly the purposes and expected consequences of this rulemaking activity.

Gwendolyn L. Harris
Commissioner

Date

Jobs Impact

The proposed new rules are not anticipated to result in the generation or loss of jobs, except for two new positions for the Division to do the domestic violence and child abuse record checks.

Agriculture Industry Impact

The proposal has no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules govern a public child protective services agency rather than a private business establishment. They establish a program in the Division of Youth and Family Services to provide financial

services to children placed by the Division with relatives who have obtained kinship legal guardianship. They propose no reporting, recordkeeping or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not required in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

The Division does not anticipate that the proposed new rule will have any impact on the achievement of Smart Growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows: